IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 168 of 2001
with
CRIMINAL REVISION APPLICATION No 169 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

SHIVUBHAI DAHYABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 168 & 169 of 2001

MR HARIN P RAVAL for Petitioner No. 1

MR IM PANDYA APP for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/06/2002

ORAL JUDGEMENT

1. These revision applications under Section 397 read with Section 401 of the Code of Criminal Procedure ('the Cr.P.C.' for short) are preferred by the same petitioner (original accused No.2) against the same respondents and having been heard together on the same issues, they are disposed by this common judgment. They are preferred from the identical orders dated 9.2.2001 below applications at Exh.17 in Criminal Cases Nos.177 and 178 of 2000 whereby the applications of the petitioner for discharge under Section 239 of the Cr.P.C. were rejected by the learned Judicial Magistrate, First Class, Modasa.

2. The applications of the petitioner for discharge were based upon the premises that, in the context of political rivalry and under the pressure of a Minister of State, a few lines were super-added in the report of the Special Auditor who audited the accounts of the cooperative society of which the petitioner was the Chairman at the relevant time. That audit report was made the basis of the F.I.Rs. lodged against the petitioner and the erstwhile Secretary of the cooperative society. According to the F.I.Rs., in short, the accused persons, i.e. the petitioner-Chairman and the Secretary, are alleged to have committed misappropriation and other irregularities in the management of the cooperative society during the period from 1.1.1998 to 30.9.1998 and the Secretary has even admitted this factum in his written statement dated 5.2.1999. The petitioner is implicated on the basis of the allegation that, as the Chairman, he was responsible for supervising the day-to-day affairs of the cooperative. The grievance of the petitioner is that such allegation of responsibility of supervising the day-to-day affairs of the cooperative is alleged only on the basis of the report of the Special Auditor in which few lines indicating such responsibility are obviously super-added at the end with a mala fide intention of implicating him so as to eliminate him from the local electroral politics. Admittedly, the petitioner's first attempt at quashment of the criminal proceedings by way of Criminal Misc. Applications Nos.2030 and 2032 of 2000 under Section 482 of the Cr.P.C. was aborted when he withdrew the same with a view to move discharge applications before the trial court under Section 239 of the Cr.P.C.

3. The learned counsel Mr.H.P.Rawal vehemently argued that the regular audit of the cooperative society in question had not revealed any irregularity and the alleged irregularities were traced out during the special audit. The report of the Special Auditor clearly

indicated that, by making additions at the end of the report, the petitioner was implicated by writing that the Chairman was also responsible for the irregularities inasmuch as it was his responsibility to look-after the day-to-day management of the cooperative under its bye-laws. It was submitted, without referring to or citing any bye-laws, that the management of the co-operative vested in the Managing Committee and not in the Chairman.

Mr.Rawal also submitted that no case of any offence either under Sections 408, 405 or Section 114 of the IPC was made out against the petitioner either in the F.I.R. or on perusal of the papers submitted along with the chargesheet. It was also sought to be canvassed that the allegations against the petitioner were so vague that, in any case, even proper charge could not have been framed against the petitioner. He, however, fairly conceded that, after the impugned order, charge was in fact framed against the petitioner for the offences punishable under Sections 408 and 114 of the IPC. It must also be noted at this stage that, although the petitions state to have annexed copies of the orders by which the petitions for quashment of the proceedings were disposed, such copes were neither found nor placed on record.

4. The learned Magistrate of the trial Court has, in the impugned order, taken the view, on the basis of several judgments, that at the stage of framing the charge, the Court could not consider the likely defence of the accused. It was also, prima facie, found that the charge of abetting misappropriation could be framed against the petitioner on the basis of the material placed on record.

5. It is clear from a plain reading of Section 239 of the Cr.P.C. that all that is required at the stage of framing charge is prima facie examination of the police report and the documents sent therewith to find out whether a case regarding commission of an offence is made out. It is only in the case where the Magistrate considers the charges against the accused to be absolutely groundless that the accused can be discharged after recording reasons. In the facts of the present case, it cannot be said that even after consideration of the police report and the documents sent therewith, the charge against the petitioner was absolutely groundless. As held by the Supreme Court in STATE OF HIMACHAL PRADESH v. KRISHAN LAL PARDHAN [AIR 1987 SC 773], all that is required at the stage of framing of charges is to see

whether a prima facie case regarding commission of certain offences is made out. The question whether the charges will eventually stand proved or not can be determined only after evidence is recorded in the case. In the context of the facts of that case, it is further observed by the Supreme Court that whatever the ultimate outcome of the case , the Judge ought to have framed charge and taken the case for trial instead of discharging the accused under Section 239 of the Cr.P.C. on the ground that the charges mentioned in the police report are groundless.

6. It would be hazardous to make any observation at this stage as regards the motivation of the parties or the evidentiary value of the material which might be relied upon by the parties at the time of trial. As seen earlier, the only important consideration at the stage of framing of charge is as to whether the charge against the accused would be absolutely groundless. It appears from the impugned order that the learned Judge of the trial Court has applied his mind on this aspect and consciously arrived at the conclusion that the material on record was sufficient to frame the charge against both the accused. In such circumstances, this Court, under its revisional jurisdiction, has to examine whether a case of serious and manifest illegality or failure of justice is made out. Since the impugned order has been made after judicious consideration of the material on record, application of mind and following the well-settled legal principles on the subject, no case for interference is made out. Therefore, without in any way commenting upon the allegations and counter-allegations of ulterior motives, both the revisions are rejected and Rule is discharged with no order as to costs. Interim relief staying the further proceedings in Criminal Case Nos.177 of 2000 and 178 of 2000 stands vacated. It shall be open for the petitioner to request the trial Court for an early hearing and disposal of the case on merits.

7. The learned counsel Mr.Rawal requested that the stay of further proceedings which was operating till today may be continued for a further period of four weeks for the purpose of affording sufficient time to the petitioner to approach the higher forum. That request, in the facts and circumstances, is rejected.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)